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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RICARDO LOPEZ, Defendant.	Criminal Case No. 08CR1461-JLS **GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY** **TOGETHER WITH STATEMENT OF THE CASE AND MEMORANDUM OF POINTS AND AUTHORITIES** Date: June 6, 2008 Time: 1:30 p.m. Court: The Hon. Jannis L. Sammartino

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Rebekah W. Young, Assistant United States Attorney, and hereby files its Motion for Reciprocal Discovery. This Motion is based upon the files and records of the case together with the attached Statement of the Case and Memorandum of Points and Authorities.

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I

STATEMENT OF THE CASE

On May 7, 2008, a federal grand jury in the Southern District of California returned a one-count Indictment charging defendant Ricardo Lopez ("Defendant") with Possession of Marijuana with Intent to Distribute, in violation of 21 U.S.C. §841(a)(1). On May 8, 2008, Defendant was arraigned on the Indictment and entered a plea of not guilty

II

STATEMENT OF FACTS

On April 24, 2008, at approximately 1:30 a.m., Border Patrol Agent Recinos was performing his official duties at the Highway 86 Checkpoint, near Westmorland, California. At that time, a 2003 orange Freightliner tractor trailer truck approached the inspection area. Agent Recinos queried the driver, later identified as Ricardo Lopez, as to his citizenship. During this time, Agent Recinos observed that Lopez was answering the questions nervously and was avoiding eye contact with him. Agent Recinos then asked Lopez what he was carrying in the semi-trailer. Lopez told Agent Recinos he was carrying a rejected load from Yuma, Arizona to Fontana, California. Lopez also told Agent Recinos that he resides in Fontana, California. Agent Recinos asked Lopez if he had a manifest for the load and if the trailer was sealed. Lopez informed Agent Recinos that he did not have a manifest and that the trailer was not sealed. Agent Recinos then obtained consent from Lopez to look inside the trailer. Lopez was sent to secondary inspection for further interview and inspection.

While in secondary inspection, Border Patrol Agents Avitia and Garcia met Lopez at the rear of the trailer and identified themselves as Border Patrol Agents. As Lopez was walking to the rear of the trailer he was on his cellular telephone. Agent Garcia asked Lopez to hang up the telephone so that he could conduct the investigation. While at the back of the trailer, Agent Garcia smelled an overwhelming odor of laundry detergent. Agent Garcia asked Lopez what was inside the trailer. Lopez told Agent Garcia that he had water bottles in the trailer. Lopez said that he had taken the trailer loaded with Arrowhead Water to Yuma, Arizona, a couple of days ago and that some of the pallets tiled and spilled. Because of this, they rejected the load.

Agent Garcia observed a green seal #5048521 attached to the trailer door. Agent Garcia asked Lopez for the manifest of the load. Lopez provided Agent Garcia with a manifest dated April 10, 2008. When Agent Garcia told Lopez that the manifest was old, Lopez ripped the paper out of Agent Garcia's hands and walked towards the cab of the truck. When inside the cab of the truck, Agent Garcia observed that Lopez was extremely nervous. Lopez was searching in the door panels, under the bed, inside the glove box and in the overhead compartments of the cab for a manifest or other paperwork. While searching the cab, Lopez used the compress air to clean sunflower seeds from the floor. Agent Garcia asked Lopez where he was coming from and where he was going. Lopez told Agent Garcia that he was coming from Yuma, Arizona and driving to Fontana, California.

Due to Lopez's behavior, Agent Garcia asked him to step out of the vehicle. Agent Garcia asked Lopez if he could look inside the trailer. Lopez gave Agent Garcia consent to look inside the trailer. In addition, Agent Garcia informed Lopez that he would provide Lopez with a CBP seal and a form to document that United States Border Patrol had opened the seal. Lopez voluntarily gave Agent Garcia consent to open the trailer. Agents Avitia and Garcia walked back to the vehicle with Lopez. Lopez put his hands in his pockets and was looking down at the ground. Agent Garcia asked Lopez what was inside the trailer. Lopez did not respond, but continued looking down at the ground. Again, Agent Garcia asked Lopez what was inside the trailer. Lopez said marijuana. Agents then took Lopez inside the checkpoint and placed him in a holding cell. Agent Simone utilized his assigned canine who alerted exterior of the trailer and received a positive alert. Agent Garcia cut the green seal on the trailer and discovered a large quantity of green cellophane wrapped bundles containing a green leafy substance. The agent opened one of the bundles and field tested the green leafy substance using a narcotic identification kit. The green leafy substance tested positive for the properties of marijuana. Agents Walla, Recinos, Simone, and Avitia weighed the sixty (60) packages of suspected marijuana and obtained an approximate weight of 653.77 kilograms (1441.3 pounds). DEA Agents then responded to the location. DEA Special Agent Huxman, as witnessed by DEA Special Agent Butler, advised Lopez of his Miranda rights. Lopez stated he understood his rights and agreed to answer questions without the presence of an attorney. Lopez stated he was being paid approximately $14,000 to transport the marijuana from Yuma, Arizona to Ontario, California.

III

GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY

A. All Evidence That Defendant Intends To Introduce In His Case-In-Chief

The Government is entitled to reciprocal discovery under Rule 16(b)(1). Pursuant to Rule 16(b)(1), the Government requests that Defendant permit the Government to inspect, copy and photograph any and all books, papers, documents, photographs, tangible objects, or make copies or portions thereof, which are within the possession, custody, or control of Defendant and which Defendant intends to introduce as evidence in his case-in-chief at trial.

The Government further requests that it be permitted to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, which are in the possession and control of Defendant, which he intends to introduce as evidence-in-chief at the trial, or which were prepared by a witness whom Defendant intends to call as a witness. The Government also requests that the Court make such order as it deems necessary under Rules 16(d)(1) and (2) to ensure that the Government receives the reciprocal discovery to which it is entitled.

B. Reciprocal Jencks – Statements By Defense Witnesses (Other Than Defendant)

Rule 26.2 provides for the reciprocal production of Jencks material. Rule 26.2 requires production of the prior statements of all witnesses, except a statement made by Defendant. The time frame established by Rule 26.2 requires the statements to be provided to the Government after the witness has testified. However, to expedite trial proceedings, the Government hereby requests that Defendant be ordered to provide all prior statements of defense witnesses by a reasonable date before trial to be set by the Court. Such an order should include any form in which these statements are memorialized, including but not limited to, tape recordings, handwritten or typed notes and reports.

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IV

CONCLUSION

For the foregoing reasons, the Government respectfully requests that its motion for reciprocal discovery be granted.

DATED: May 21, 2008

Respectfully Submitted,

KAREN P. HEWITT
United States Attorney

/s/ ***Rebekah W. Young***
REBEKAH W. YOUNG
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RICARDO LOPEZ, Defendant.	)	Criminal Case No. 08CR1461-JLS CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, REBEKAH W. YOUNG, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

John C. Ellis, Jr.

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 21, 2008.

/s/ ***Rebekah W. Young***
REBEKAH W. YOUNG
Assistant U.S. Attorney